

In re ) Fair Hearing No. 9454  
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Appeal of )

The petitioner appeals the Department of Social Welfare's calculations of her August, 1989, ANFC benefits and her September, 1989, Food Stamp benefits. The issue is whether the department attributed certain income to the petitioner in accord with the pertinent regulations.

In lieu of an oral hearing the parties have submitted the following Stipulation of Facts:<sup>1</sup>

1. [Petitioner] is a 33-year-old woman who resides at [address].
2. She has three minor children: L.H., age 15; L.B., age 11; and A.B., age 6.
3. [Petitioner] is currently unemployed and is a full-time student at Community College of Vermont in [town], Vermont.
4. She is currently receiving ANFC and Food Stamps.
5. [Petitioner] worked as a waitress at [place of employment] in [town], Vermont until July 31, 1989.
6. She received her last paycheck on 8/4/89 for her last week of employment. Her gross wages were \$76.50. She also reported receiving \$160.00 in tips during her last week of employment, July 25 - July 31.
7. The Department terminated [petitioner's] ANFC grant effective July, 1989 due to increased income.

Her food stamps were not terminated.

8. [Petitioner] reapplied for ANFC on 8/2/89.

9. The following is the Department's calculation for [petitioner's] August, 1989 ANFC grant based on the notice dated August 31, 1989 (copy attached):

Earned Income	+\$236.50 (\$76.50 wages*, \$160.00 tips**)
Work expense	-75.00
Earned income disregard	-30.00
Unearned (support)	<u>+244.50</u>
ANFC Income	375.50
Need Standard (4)	740.00
Shelter expense	<u>271.00</u>
Total Needs	1011.00
67% total of needs	677.37
Less ANFC income	<u>375.50</u>
ANFC Grant	301.00

\*Received in August      \*\*Received in July

10. She is an ongoing food stamp recipient whose benefits are figured retrospectively based on figures from the previous "budget" month on her monthly report form.

11. The following is the Department's calculations for [petitioner's] September, 1989 food stamp grant based on the Department's notice dated 9/13/89:

Earned income	+236.50(received in August)
Deduction	- 47.30
Unearned (support)	+294.00(received in August)
ANFC	+636.00(received in September)
Deduction	-106.00
Shelter deduction	<u>-170.00</u>
Food Stamp income	+843.20
Food Stamps for family of 4	= \$47.00

12. [Petitioner] disputes the Department's calculations for: 1) her August, 1989 ANFC grant and 2) her September, 1989 food stamp grant.

13. The parties stipulate that the attachments to this Stipulation are accurate copies of records in petitioner's case file.

ORDER

The department's decision is modified as set forth below.

REASONS

I) ANFC

As noted above, the petitioner was terminated from ANFC (but not from food stamps, see infra) as of July 31, 1989, because of the excess income she was earning at her waitressing job. However, the petitioner's job ended on July 31, 1989, and she reapplied for ANFC on August 2, 1989.

Her last paycheck from her job was dated August 4, 1989. It showed she was paid wages of \$76.50, and that she had received tips totaling \$160.00 during her last week of work, which was July 25 - 31.

In computing the petitioner's ANFC grant for August, the department counted as earned income for August not only the petitioner's wages, which were paid on August 4, 1989, but also the petitioner's tips, which were reported on August 4, but received by the petitioner the last week in July. The petitioner argues that her July tips should not be counted as August income. The hearing officer agrees.

The department, without citing any regulation or policy guideline, argues that the "best and most accurate" method of determining tip income is when that income is reported. This may well be true for ongoing monthly reporters (see

infra). However, the petitioner, at the time of her August, 1989, application, was not a monthly reporter--she was not receiving ANFC at all. The department has stipulated that the petitioner received the tips in question in July. In determining the petitioner's initial eligibility for ANFC for August there is no regulatory or practical basis for the department to consider income it concedes was earned in July. Counting tip income in the ANFC month it is reported is expedient and results in no loss to the recipient if--but only if--the recipient is an ongoing monthly reporter. However, on an initial application for ANFC it results in a substantial loss in benefits--in the petitioner's case, \$160.00.

There being no regulatory or compelling practical basis supporting the department's method of calculations, the department should be required to compute the petitioner's ANFC for August, 1989, counting only the earned income that was actually received by the petitioner in that month. Since the petitioner received \$160.00 in tips in July, 1989, this should not be counted as earned income for August.

## II) Food Stamps

As noted above, the petitioner continued to be eligible for food stamps in August and September, 1989; and she continued to be a "monthly reporter" for that program.<sup>2</sup> In calculating the food stamp benefits of individuals with monthly income, the department uses the previous (or "budget") month's income as reported on the individual's

monthly report form. F.S.M. § 273.21(j)(1)(vii)(A).

However, the regulations also allow the department to count as income the amount of the individual's ANFC grant as paid in the food stamp "issuance month", rather than in the "budget month". F.S.M. § 273.21(j)(1)(vii)(B). Thus, for September, 1989, the department calculated the petitioner's food stamps according to the amount of earned income and child support she received in August, and on the amount of ANFC she received in September.

F.S.M. § 273.21(j)(1)(vii)(B), however, also includes the following provision:

. . . If the State agency elects to use the PA (ANFC) grant to be paid in the issuance month, the State agency shall ensure that;

. . .

(2) The State agency shall disregard income received in the budget month from a terminated source . . .

On her September, 1989, food stamp monthly report form, the petitioner reported \$236.50 as "earned income" and \$294.00 in child support. The department factored both of these sources of income in determining the petitioner's September food stamp allotment.<sup>3</sup> The petitioner maintains that since her job had been terminated and (because she has returned to ANFC) her child support (effective September, 1989) was assigned to the department, these payments should have been considered to be from "terminated sources" under the above regulation, and thus should have been disregarded by the department in calculating her September food stamps.

The department did not directly address this argument in its memorandum,<sup>4</sup> but it did indicate in its memorandum that the petitioner was still "on call" as a waitress. The hearing officer is unsure whether the department is maintaining, on the basis of this, that the petitioner's waitressing job was not a "terminated source" of income. However, the stipulation of facts, entered into by the department on December 13, 1989, clearly states that the petitioner "worked as a waitress . . . until July 31, 1989" and that she "received her last paycheck on 8/4/89 for her last week of employment, July 25 - July 31." Thus, it must be concluded that the department has conceded the fact that the petitioner's earned income as reported in August, 1989, was from a "terminated source." Therefore, 273.21(j)(1)(vii)(B)(2), supra, is both applicable and controlling with regard to this source of income.

The petitioner's child support income is more problematic. When she became eligible to receive ANFC, the petitioner was required to assign to the department all her rights to collect child support. In practice, the department receives all the child support due an ANFC recipient, but provides the recipient a \$50.00 "pass through" (in addition to regular ANFC benefits) for each month it collects child support on behalf of the recipient.

See W.A.M. §§ 2231.31 and 2231.36. Starting in September,

1989, the department received the petitioner's child support payments, and it gave the petitioner a \$50.00 "pass through" in addition to her ANFC. The petitioner argues that this arrangement rendered her August child support payment, the last one she received directly, a "terminated source" of income under F.S.M. § 273.21(j)(1)(vii)(B)(2), supra. The Board agrees.<sup>5</sup>

Although there is no question that the "source" of the child support payments (the father of the petitioner's children) continued to make the support payments, the petitioner's status as an ANFC recipient meant that she no longer received them. Like child support, "pass through" payments are considered income for purposes of food stamp calculations. See F.S.M. §§ 273.9(b)(2) and 273.9(b)(5)(ii). However, unlike other--non-assigned--sources of income the amount of child support paid by the child's father does not affect the amount of the petitioner's ANFC grant. Thus, unlike other "terminated" sources of income, this loss of income is not compensated in whole or in part by the receipt of ANFC benefits. This source of income was, in fact, "terminated" for the petitioner. Therefore, it must be concluded that it meets the above definition of "income . . . from a terminated" source, and it must be "disregarded".

In view of the foregoing it is concluded that the department should recompute the petitioner's September, 1989, food

stamps disregarding the income she received in August, 1989 from her "terminated" employment and child support.

FOOTNOTES

<sup>1</sup>Copies of memoranda submitted by the parties were also furnished to members of the board.

<sup>2</sup>It is not known whether the petitioner was paid food stamps for August, 1989, or whether she was simply carried on the program as a monthly reporter that month even though no benefits were payable because of excess income in July.

<sup>3</sup>For Food Stamp purposes, the fact that the department counted her July tips as income for August is of no practical consequence. As noted above, because the petitioner was a monthly reporter throughout the period, she had no net loss in food stamps.

<sup>4</sup>The department has also not requested an opportunity to respond to the petitioner's memorandum, which was submitted at the same time as that of the department.

<sup>5</sup>For the record, the hearing officer agrees with the board's conclusions.

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